



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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Seattle, Washington 98101-3140

March 25, 2008

Reply to  
Attn Of: ETPA-088

Ref: 05-059-FWS

Yukon Flats EIS Project Office  
C/o ENSR  
1835 Bragaw Street, Suite 490  
Anchorage, AK 99508

Dear Yukon Flats EIS Team:

The U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Fish and Wildlife Service (FWS) **Draft Environmental Impact Statement (DEIS) for the Proposed Land Exchange, Yukon Flats National Wildlife Refuge, Alaska** (CEQ No. 20080021). Our review of the DEIS was conducted in accordance with our responsibilities under National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309 specifically directs the EPA to review and comment in writing on the environmental impacts associated with all major federal actions.

The DEIS was prepared to evaluate the potential impacts from the proposed exchange of lands in the Yukon Flats National Wildlife Refuge (Refuge) between the FWS and Doyon, Limited (Doyon), an Alaska Native Regional Corporation, and provide the FWS with the information needed to decide whether to proceed with the exchange, and identify appropriate the stipulations and mitigation measures necessary to protect Refuge resources. According to the DEIS, the exchange is being considered because it will increase the amount of land managed under national Refuge principles, add priority habitats to the Refuge, and consolidate land ownership patterns in the Refuge. If the exchange is approved by the FWS regional and national Directors, it will be sent to Congress for a 30-day review. Although Federal agencies considering land exchanges with Native corporations are exempt from complying with NEPA under the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the FWS voluntarily agreed to develop an EIS based on the controversial nature of the project, as well as requests received from the public, tribal governments, and Doyon.

Following the Alaska Native Claims Settlement Act of 1972 (ANCSA), Doyon maximized Native corporation ownership in the Yukon Flats area through its land selections because of the area's oil and gas potential. As such, Doyon currently has ownership of approximately 1.055 million acres with oil and gas potential, which can be developed at present. Doyon, however, has been interested in acquiring Federal oil and gas interests in the south-central portion of the Refuge since 1980 (FWS 2005). In 2004, the FWS and Doyon agreed to a fee title exchange of lands and developed an agreement (Proposed Action) that would give Doyon title to: 1) 110,000 surface and subsurface acres ("core lands") and 2) an adjacent 97,000 acres of oil and gas rights with no surface occupancy (halo lands). In exchange, the U.S.



Government (Government) would receive a minimum of 150,000 acres that are priority fish and wildlife habitat. Doyon would also reallocate 56,500 acres of current land selections to outside of the Refuge so that acreage would remain in Federal ownership. Furthermore, an additional 132,000 acres would be exchanged by each party to consolidate ownerships and facilitate land management within the Refuge. Lastly, Doyon would reserve a subsistence easement on all lands conveyed to the FWS, and the FWS would reserve a 1-mile wide public easement along Beaver Creek to protect public access in the area conveyed to Doyon.

According to the DEIS, if approved, the exchange could be completed by the end of 2008, and oil and gas exploration on Doyon exchange lands could follow within a few years. If Doyon produces oil and/or gas, the FWS would receive a production payment, which could only be used to acquire additional lands within Alaskan refuges and to construct refuge facilities. If oil or gas is produced, Doyon also has agreed to sell up to 120,000 acres of its Refuge holdings to the Government.

In addition to the Proposed Action, the DEIS analyzes a No Action Alternative, and two other action alternatives. Under the No Action Alternative, the exchange would not occur, but consolidation of lands could still take place in the future. Oil and gas exploration and development on Doyon's existing lands could still occur, along with various access corridors. Project-specific NEPA analysis for the corridor rights-of-way (ROWs) would be developed as necessary.

Under the Exchange with Non-Development Easements, Phase 1 would be the same as the Proposed Action. In Phase II, Doyon would donate 120,000 acres with non-development easements within the Refuge, instead of being sold to the Government. Easements would restrict most resource development; however, no general public access or use would be allowed among other restrictions. The FWS would still receive perpetual payments for oil and gas, and Doyon would still compensate the FWS for any ROWs.

With the Land Exchange Excluding the White-Crazy Mountains Alternative, surface lands previously recommended by the FWS for Wilderness designation in the 1980's (approximately 26,500 acres of the core lands and 12,000 acres of halo lands under Proposed Action) under the Wilderness Act of 1964 would be excluded from the exchange. An access ROW would still likely traverse the recommended-Wilderness area. Although this alternative retains the option for Congress to designate much of this area as Wilderness, the transportation corridor would not qualify as Wilderness. Drilling would only be allowed outside of the recommended-Wilderness area. Subsurface oil and gas resources within the area would be accessed using directional drilling from outside of the area. These lands would continue to qualify for future Wilderness designation. The acreage of halo lands would increase by approximately 8,000 acres under this alternative compared to the Proposed Action.

EPA is primarily concerned with the following issues which were identified in our review of the DEIS:

- 1) the unavailability of appraisal information and other data for lands being considered for the exchange;

- 2) the limited range and number of alternatives considered in the DEIS; and
- 3) the potential habitat fragmentation and impacts to users due to the Refuge being essentially split into two sections.

These and other additional concerns and issues are discussed in our detailed comments (attached). EPA recommends that adaptive management and monitoring be employed to allow for evolving policy if impacts are different from those presently contemplated. Lastly, although it provides the least amount of acreage to the FWS, EPA requests that the FWS consider selecting as its Preferred Alternative the Land Exchange Excluding the White-Crazy Mountains Alternative in the final EIS. This would safeguard valuable portions of the area for wilderness designation eligibility, help to preserve its astounding resources, and possibly deflect or eliminate potential impacts to the White Mountain National Recreation Area (WMNRA).

Because of these concerns, EPA has assigned a rating of "EC-2" (Environmental Concerns – Insufficient Information) to the DEIS. EPA's rating system criteria can be found at <http://www.epa.gov/compliance/nepa/comments/ratings.html>. This rating and a summary of our comments will be published in the *Federal Register*.

EPA appreciates the opportunity to review and provide comments on the Yukon Flats Land Exchange DEIS. If you have any questions regarding our comments, please contact Jennifer Curtis of my staff in the EPA Alaska Operations Office in Anchorage at (907) 271-6324 or [curtis.jennifer@epa.gov](mailto:curtis.jennifer@epa.gov).

Sincerely,

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Christine Reichgott  
Manager, NEPA Review Unit

Enclosure



**EPA Detailed Comments on the  
US Fish and Wildlife Service Yukon Flats Land Exchange  
Draft Environmental Impact Statement**

**Purpose and Need**

In our April 14, 2006 scoping comments, EPA recommended that the EIS provide “a clear and concise statement of the purpose and need for the proposed land exchange within the Refuge” consistent with the implementing regulations for NEPA (see 40 CFR 1502.13). We also suggested that FWS provide information “that identifies how the land exchange would be compatible with the purposes of the Refuge” and meet the “broader public interest”. While the FWS did present an extensive background of the goals of both the Refuge and Doyon, we could not clearly identify the Purpose and Need for the project.

*Recommendation: We recommend that the Purpose and Need for the project be clarified in the final EIS.*

**Range of Alternatives**

In our 2006 scoping letter we also acknowledged that the October 19, 2005, Notice of Intent (NOI) included brief descriptions of the proposed action, the two action alternatives and a no action alternative, and that they appeared to be a good starting point for developing a range of reasonable alternatives that would be fully analyzed in the DEIS.

This range was not extended to include other reasonable alternatives that could potentially reduce impacts, such as a phased approach that would allow for evaluation and monitoring of impacts at a smaller scale, and subsequent adjustments for future phases. EPA believes there are additional reasonable alternatives that should be considered by the FWS that would allow the Service to achieve its goals and objectives while minimizing impacts to the aquatic and terrestrial resources in, and dependent on, the exchange lands.

*Recommendation: EPA recommends that the FWS consider additional reasonable alternatives to minimize impacts to resources, such as a phased approach to exchanging core lands.*

**Study Area Confined to Refuge Boundaries**

Outside of the issue of socioeconomics, the study area identified for the analysis is currently defined as the area within the Refuge boundaries. EPA believes that, although the access corridor will be evaluated in a project-specific EIS, the study area should also include area anticipated for access/pipeline corridors because project effects will extend to corridors if production occurs.

*Recommendation: We recommend that the study area be expanded in the final EIS to include the proposed access corridor, which would include the community of Livengood.*

## **Criteria to Identify Exchange Lands and Appraisal Information**

EPA understands that the FWS is still in the process of finalizing the appraisals of surface and subsurface Refuge and Doyon lands that are under consideration for the exchange. In scoping, we commented that it will be “very important to describe in detail in the EIS the methodologies that were used to select the lands for proposed exchange and acquisition and to determine the appraisals and value of the lands, and to discuss how the FWS used and compared the appraisals and land values in their development and analysis of alternatives.” This appraisal information was not available at the time the DEIS was published, which can significantly affect the analysis of impacts and the public’s understanding of the project. Also, an explanation of basing the ranking of parcel priority on wildlife habitat value is not provided. Given that there are other priorities and values of resources in the Refuge, it is important that this explanation be given. This is also an opportunity for traditional ecological knowledge (TEK) to be incorporated into the FWS’s analysis.

*Recommendation: EPA recommends that FWS consider providing appraisal information and additional information regarding the parcel priority ranking to stakeholders and the public prior to release of the final EIS, or consider incorporating this information into a supplemental document for public review and comment.*

## **Refuge Division and Habitat Fragmentation**

The proposed action would complete the now partial divide between the west and east areas of the Refuge. This divide can cause habitat fragmentation and have serious implications for users, even with a mile-wide access corridor along Beaver Creek. Currently these impacts are not thoroughly evaluated in the DEIS.

*Recommendation: These impacts should be identified and evaluated, and mitigation for these impacts should be discussed in the FEIS.*

## **Access to Oil and Gas Resources on Halo Land**

Currently there is no explanation of the phrase “no surface occupancy”, although there is reference to directional drilling. Because different agencies treat various occupancy terms differently, this information is critical to understanding the potential impacts to areas where no surface occupancy is declared.

*Recommendation: EPA recommends that the FWS provide a clear definition of the phrase “no surface occupancy”, and if limited infrastructure is allowed under this status, describe the impacts of such infrastructure in the final EIS.*

## **Additional Land Exchange in Phase II Proposed Action**

The land selection and conveyance process under ANCSA is confusing and cumbersome, and land status changes frequently. We acknowledge the FWS’s efforts to explain the current and possible future status of lands within the Refuge. There is currently, however, no discussion



of possible over selection, or if ANCSA 12(b) conveyances are to village corporations or municipal/tribal entities, or what the recipient is forecasting to do with the surface estate. If not to be developed for oil and gas, or other resource extraction activities, it is not clear if these exchanged lands can be considered to "offset" impacts, as stated in the DEIS. There is also no discussion of the role of the village corporation(s) in this exchange as current or future surface landowners.

*Recommendation: We recommend that the FWS provide additional information in the final EIS regarding the current or anticipated status of selections, the anticipated use of those selected lands and resources (if known), as well as the role of village corporations in the Agreement and land exchange.*

### **Assessment of Wetlands and Uplands**

The DEIS classifies the lands considered in this exchange as low land or upland, and provides basic information on the number of lakes and miles of rivers. There is no specific qualitative or quantitative information about the habitats and values of the lands and waters being considered under this exchange. As stated previously, if this information is included in the appraisal, this information should be distributed to stakeholders and the public beforehand to ensure ample time for public review. It is difficult to determine the "equal value", analyze the impacts, or evaluate gains vs. losses without this information. If not being considered in the appraisal, additional effort is needed to develop this information is necessary.

*Recommendation: EPA recommends that additional analysis, based on specific qualitative or quantitative information about the habitats and values of the lands and waters being considered for exchange should be completed, and that information provided to stakeholders and the public prior to release of the final EIS.*

### **Impacts to Water and Air Quality and Aquatic Resources**

EPA recognizes that the proposed action would result in the FWS's gain of, at minimum, 150,000 acres of mostly high value lowland habitat, with an opportunity to purchase yet another 120,000 acres--the most amount of acreage out of any of the alternatives. Without knowing precisely if or where the development of a small or large oil field(s) would occur at this stage, as well as additional detailed information to be provided by the land appraisals, it is difficult to assess impacts to waters of the U.S., including wetlands, from the proposed construction of gravel pads, roads, airstrips, mining of gravel, etc. This situation holds true for impacts to air quality as well. We do know, however, the general types of and potential magnitude (hundreds to thousands of acres) of impacts anticipated as a result from the proposed development, which are covered in the DEIS (e.g., melting of active layer of permafrost, extremely slow rate of recovery, introduction of invasive species, erosion & sedimentation, oil spills, etc.).

At the point when more site/project-specific information is made available through future NEPA evaluations, EPA will comment on the least environmentally damaging practicable alternative (LEDPA) and appropriate compensatory mitigation for unavoidable impacts to the



aquatic environment [40 CFR § 230.10(a)(2), 230.10(a)(3), 230.10(d), 230.12(a)(3)(iii)]. In general, EPA supports alternatives with the least impacts to resources and the environment.

*Recommendation: Future projects evaluated by the FWS should identify the LEDPA as the Preferred Alternative.*

### **Cumulative Impacts**

Based on the discussion in the DEIS regarding current information from the US Geological Survey (USGS 2006), as well as well known projections for oil and gas costs into the future, there appears to be a high likelihood that Doyon will attempt to develop oil and gas on some or all of its lands currently held in four other areas of the Refuge in the near term. These are lands that are not included in the exchange. If such development occurs, there will be associated access and transmission infrastructure needed for each of these areas. The FWS does not evaluate this probable scenario in the DEIS, although it could result in significantly greater cumulative impacts to the Refuge overall.

*Recommendation: EPA recommends that the FWS recognize the likelihood of near term exploration and development scenarios for other areas in the Refuge, and disclose those cumulative impacts as appropriate.*

### **Adaptive Management and Monitoring**

Currently, all of the action alternatives allow for the exchange of significant acreage initially, without a clear indication of monitoring that will take place should impacts be more significant, or should they vary, from what is currently anticipated, or consideration of an approach that would allow for adjustment or adaptation should unexpected results or impacts occur. Developing an adaptive management strategy and incorporating monitoring, such as with a phased approach, would allow the FWS and Doyon the opportunity to evaluate impacts as they occur at a smaller scale, and provide for adjustment to future phases as necessary.

*Recommendation: Incorporate an adaptive management and monitoring strategy to allow for appropriate response to unanticipated impacts in order to minimize or avoid unforeseen consequences. Clear monitoring goals and objectives should be identified such as what questions are to be answered; what parameters are to be monitored; where and when monitoring will take place; who will be responsible; how the information will be evaluated; what actions (contingencies, adaptive management, corrections to future actions) will be taken based on the information; and how the public can get information on mitigation effectiveness and monitoring results.*

### **Climate Change**

EPA commends the FWS for its discussion of climate change as it relates to the exchange and the project area in general. As with the discussion of water and air quality impacts, the exchange as proposed under any of the alternatives does not contribute to, and is not significantly affected by, climate change. However, the anticipated oil and gas development and production

will likely affect and be affected by climate change, so disclosure of project-related greenhouse gas emissions related to such activities will need to be included in future NEPA analyses.

Additionally, with respect to potential climate change impacts, EPA would anticipate a discussion of the following:

- 1) the potential impacts of climate change on a project, if appropriate (e.g., the project has a long enough life [ $>20$  years] that it could be impacted by future climate change effects);
- 2) a project's direct effects in appropriate cases (e.g., if the project will emit greenhouse gases over an extended period of time [ $>20$  years]); as well as,
- 3) a generic discussion of a project's potential indirect climate change effects, if appropriate.

We would also expect that mitigation of the project's direct climate change effects, such as protecting the project from the effects of climate change, reducing the project's adverse air quality effects, and/or promoting pollution prevention or environmental stewardship, would also be included in the discussion.

*Recommendation: Any future project or site-specific NEPA analysis should include adequate information regarding climate change as described above.*

### **Tribal Consultation and National Historic Preservation Act (NHPA) Section 106**

Chapter 5 of the DEIS describes the process that the FWS has followed to engage federally-recognized tribal governments in and around the Refuge in government-to-government consultation, as well as the comments and issues that were identified in the process. It also states that additional meetings will be held at the request of tribal governments. Furthermore, there is some discussion regarding the requirements of Section 106 of the NHPA in Section 1.7.2 of Chapter 1. It is not clear, however, if the approach to elicit tribal participation and consultation has been effective, or if the tribal governments have been provided opportunity to participate as consulting parties under Section 106. There is also no mention of whether or not the FWS sought out TEK from native residents and resource users through the respective tribal governments. Such information can be very useful and inform the decision-maker of little known or unidentified resources and values not typically recognized through the NEPA process.

EPA recognizes the effort the FWS has made to engage tribal governments in this process, but additional work may be necessary to adequately fulfill the obligations of the FWS to comply with Executive Order 13075 and Section 106 of the NHPA. This may include the identification and incorporation of TEK into the NEPA analysis.

*Recommendation: The FWS should continue to try to engage tribal governments in effective government-to-government consultation, as well as offer appropriate tribal governments the opportunity to become consulting parties under Section 106, as appropriate.*